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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,113	12/10/2003	Michael Krieger	32405-199591	4513
51715 7590 03/19/2008 VECTOR PRODUCTS, INC. ROBERT POWELL P.O. BOX 34385 c/o VENABLE LLP WASHINGTON, DC 20043-9998				
EXAMINER NEGRON, ISMAEL				
ART UNIT 2885		PAPER NUMBER		
MAIL DATE 03/19/2008		DELIVERY MODE PAPER		

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Art Unit: 2834



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/731,113
Filing Date: December 10, 2003
Appellant(s): KRIEGER, MICHAEL

Jeffri Kaminski (Reg. No. 42,709)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 17, 2006 appealing from the
Office action mailed March 17, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The After-Final amendment (filed June 8, 2006) has been entered in response to Appellant's brief; the copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,628,339	WERNER	2-1953
6,260,985	ZELLER	7-2001
6,789,924	YUEN	9-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. 35 U.S.C. 102

i- Claims 25 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by WERNER (U.S. Pat. 2,628,339)

WERNER discloses an illumination device having:

- **a first housing (as recited in Claim 25)**, Figure 1, reference numbers 11, 14 and 75;
- **the first housing defining a cavity (as recited in Claim 25)**, as seen in Figure 1;

- **a rechargeable power supply (as recited in Claim 25), column 3, line 50;**
- **the power supply being disposed in the cavity (as recited in Claim 25), column 3, lines 50-55;**
- **a light source (as recited in Claim 25), Figure 1, reference number 16;**
- **the light source being selectively coupled to the power supply (as recited in Claim 25), inherent;**
- **an AC to DC adapter (as recited in Claim 25), Figure 1, reference numbers 80 and 81;**
- **the adapter including a second housing (as recited in Claim 25), Figure 1, reference number 81;**
- **the second housing containing a converter circuitry (as recited in Claim 25), column 4, lines 56 and 57;**
- **the converter being arranged within the cavity such that the second housing is substantially enclosed by the first housing (as recited in Claim 25), as seen in Figure 1; and**
- **the converter circuitry including a wall cube (as recited in Claim 27), as seen in Figure 1.**

B. 35 U.S.C. 103

- i-* Claims 14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339).

WERNER discloses an illumination device having:

- **a first housing (as recited in Claim 14)**, Figure 1, reference numbers 11, 14 and 75;
- **a rechargeable power supply (as recited in Claim 14)**, column 3, line 50;
- **the power supply being disposed in the first housing (as recited in Claim 14)**, column 3, lines 50-55;
- **a light source (as recited in Claim 14)**, Figure 1, reference number 16;
- **the light source being coupled to the power supply (as recited in Claim 14)**, inherent;
- **an AC to DC converter (as recited in claims 14 and 25)**, Figure 1, reference numbers 80 and 81;
- **a second housing (as recited in Claim 14)**, Figure 1, reference number 80;
- **a third housing**, Figure 1, reference number 81;

- **the converter being disposed within the second and third housings**, as seen in Figure 1;
- **the converter including an AC connector (as recited in Claim 14)**, Figure 1, reference number 79;
- **the AC connector being arranged for connection to an external power cord (as recited in Claim 14)**, as evidenced by Figure 2;
- **the AC connector being arranged for delivering AC power to the converter for recharging the rechargeable power supply (as recited in Claim 14)**, column 5, lines 1-11;
- **the second housing being substantially enclosed by the first housing (as recited in Claim 14)**, as seen in Figure 1;
- **the AC connector including prongs (as recited in Claim 16)**, Figure 1, reference number 79;
- **the prongs extending from the first housing (as recited in Claim 16)**, as seen in Figure 4; and
- **the converter circuitry and prongs including a wall cube (as recited in Claim 17)**, as seen in figures 1 and 2.

WERNER discloses all the limitations of the claims, except the AC-to-DC converter being disposed within a the second housing (as recited in Claim 14), or the second housing meeting the UL Standard 1310 (as recited in Claim 18) or UL Standard 94 V1 (as recited in Claim 19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to disposed the AC-to-DC converter of WERNER within a single housing (as recited in Claim 14), since it has been held that forming in one piece a structure which has formerly been formed in two, or more pieces, involves only routine skill in the art. *In re Larson*, 144 USPQ 347, 349 (CCPA 1965). In this case, forming the AC-to-DC converter second and third housings into a single housing would have flown naturally to one of ordinary skill in the art to reduce costs and simplify the assembly of the patented illumination device of WERNER.

Regarding claims 18 and 19, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to have the second housing satisfy the requirements of UL Standard 1310 (as recited in Claim 18),

or UL Standard 94 V1 (as recited in Claim 19), since satisfying the operational and/or regulatory requirements of a particular application would have flown naturally to one of ordinary skill in the art.

- ii-* Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339) in view of ZELLER (U.S. Pat. 6,260,985).

WERNER individually discloses, or suggests (as detailed in previous subsection C(i)), an illumination device as claimed in independent Claim 14, such device further including:

- **a handle (as recited in Claim 20)**, Figure 1, reference number 11;
- **the handle having first and second ends (as recited in Claim 20)**, as seen in Figure 1; and
- **the light source being disposed on the handle (as recited in Claim 21)**, as seen in Figure 1.

WERNER individually discloses, or suggests, all the limitations of the claims, except the handle being pivotally

coupled to the first housing (as recited in Claim 20), such handle being pivotable between a raised position and a lowered position (as recited in Claim 20);

ZELLER discloses an illumination device having:

- **a first housing (as recited in Claim 14)**, Figure 1, reference number 14;
- **a rechargeable power supply (as recited in Claim 14)**, column 4, lines 40-49;
- **the power supply being disposed in the first housing (as recited in Claim 14)**, column 4, lines 40-49;
- **a light source (as recited in Claim 14)**, as evidenced by column 3, lines 8-17;
- **the light source being coupled to the power supply (as recited in Claim 14)**, inherent;
- **a handle (as recited in Claim 20)**, Figure 1, reference number 16;
- **the handle having a first end (as recited in Claim 20)**, Figure 1, reference number 22;
- **the handle having a second end (as recited in Claim 20)**, Figure 1, reference number 20;

- **the handle being pivotally coupled to the first housing (as recited in Claim 20)**, column 3, lines 9-12;
- **the light source being disposed on the handle (as recited in Claim 21)**, as seen in Figure 1; and
- **the handle being pivotable between a raised position and a lowered position (as recited in Claim 22)**, column 3, lines 9-15.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add the pivotable handle of ZELLER to the illumination device of WERNER, to be able to redirect the light from the light source in any desired direction independent of the housing, as per the teachings of ZELLER (see column 3, lines 9-18).

- iii-* Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339).

WERNER discloses (as detailed in previous subsection B(i)) all the limitations of the claims, except the second housing

meeting the UL Standard 1310 (as recited in Claim 28) or UL Standard 94 V1 (as recited in Claim 29).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to have the second housing satisfy the requirements of UL Standard 1310 (as recited in Claim 28), or UL Standard 94 V1 (as recited in Claim 29), since satisfying the operational and/or regulatory requirements of a particular application would have flown naturally to one of ordinary skill in the art.

iv- Claims 30 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339) in view of ZELLER (U.S. Pat. 6,260,985).

WERNER individually discloses (as detailed in previous subsection B(i)), an illumination device as claimed in independent Claim 14, such device further including:

- **a handle (as recited in Claim 30)**, Figure 1, reference number 11;
- **the handle having first and second ends (as recited in Claim 30)**, as seen in Figure 1;

- **the light source being disposed on the handle (as recited in Claim 33), as seen in Figure 1;**
- **a switch (as recited in Claim 35), Figure 1, reference number 36;**
- **the switch being arranged in the handle (as recited in Claim 35), column 3, lines 43-55;**
- **the switch making and breaking a connection between the light source and the power supply (as recited in Claim 35), column 3, lines 42-49;**
- **a locking mechanism (as recited in Claim 36), as evidenced by Figure 1;**
- **the locking mechanism being disposed on the handle (as recited in Claim 36), as seen in Figure 1;**
and
- **the locking mechanism being actuated by an user to lock the switch in an ON position (as recited in Claim 36), as evidenced by column 3, lines 42-49.**

WERNER individually discloses, or suggests, all the limitations of the claims, except the handle being pivotally coupled to the first housing (as recited in Claim 20), such

handle being pivotable between a raised position and a lowered position (as recited in Claim 20);

ZELLER discloses an illumination device having:

- **a first housing (as recited in Claim 25)**, Figure 1, reference number 14;
- **a rechargeable power supply (as recited in Claim 25)**, column 4, lines 40-49;
- **the power supply being disposed in the first housing (as recited in Claim 25)**, column 4, lines 40-49;
- **a light source (as recited in Claim 25)**, as evidenced by column 3, lines 8-17;
- **the light source being coupled to the power supply (as recited in Claim 25)**, inherent;
- **a handle (as recited in Claim 30)**, Figure 1, reference number 16;
- **the handle having a first end (as recited in Claim 30)**, Figure 1, reference number 22;
- **the handle having a second end (as recited in Claim 30)**, Figure 1, reference number 20;

- **the handle being pivotally coupled to the first housing (as recited in Claim 30), column 3, lines 9-12;**
- **the handle being pivotable between a raised position and a lowered position (as recited in Claim 30), column 3, lines 9-15;**
- **the light source being disposed on the handle (as recited in Claim 33), as seen in Figure 1; and**
- **a second light source (as recited in Claim 34), Figure 23, reference number 100;**
- **the second light source being disposed in the first housing (as recited in Claim 34), as seen in Figure 23.**

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add the pivotable handle of ZELLER to the illumination device of WERNER, to be able to redirect the light from the light source in any desired direction independent of the housing, as per the teachings of ZELLER (see column 3, lines 9-18).

In addition, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to add a second light source to the housing of WERNER (as recited in Claim 34), to increase the utility of the illumination device, as per the teachings of ZELLER.

- v- Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339) in view of ZELLER (U.S. Pat. 6,260,985) as applied to claims 25 and 30 above, and further in view of YUEN (U.S. Pat. 6,789,924).

WERNER and ZELLER disclose individually, or suggest in combination, all the limitations of the claims (as detailed in subsections C(iv)) except:

- a lock (as recited in Claim 31);
- the lock being configured to lock the handle in at least one of the raised and lowered positions (as recited in Claim 31); and
- the lock having a spring lock mechanism (as recited in Claim 32).

YUEN discloses a mechanism for locking handles of illumination devices (Figure 6, reference number 50) in one of a plurality of operational positions, such locking mechanism being spring pressure mechanism (Figure 6, reference number 52).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the locking mechanism of YUEN in the illumination device of WERNER and ZELLER, to be able to lock the handle in a desired position, as per the teachings of YUEN (see column 6, lines 32-49).

(10) Response to Argument

A. Regarding the Examiner's rejection of **Claim 34** under 35 U.S.C. 112, second paragraph, the Appellant argues that the proposed amendments to the claim, presented in the After-Final amendment filed June 8, 2006, overcomes the cited rejection, and requests that such amendment be entered.

Appellant's arguments regarding the rejection of Claim 34 under 35 U.S.C. 112, second paragraph have been considered meritorious. The After-Final amendment filed June 8, 2006 has been entered.

B. Regarding the Examiner's rejection of **Claim 14** under 35 U.S.C. 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339), the Appellant argues (in page 15, lines 8-17) that the cited reference fails to disclose all the features of the claimed invention, specifically the second housing containing the AC-to-DC converter, such second housing being substantially enclosed by the first housing. The Appellant further argues (in page 15, lines 30 and 31) that the transformer 80 and rectifier unit 81 of WERNER do not constitute separate housings, but are mere components of the AC-to-DC converter. The Appellant even further argues (in page 16, lines 5-16) that, even if the AC-to-DC converter of WERNER was considered as disclosed in a separate housing, there is no motivation to combined such separate housings into a single unit, as no evidence can be found in the reference itself that such modification would reduce costs and simplify assembly, as argued by the Examiner.

In response to Appellant's arguments that WERNER (U.S. Pat. 2,628,339) failed to disclose the second housing containing the AC-to-DC

converter, such second housing being substantially enclosed by the first housing, the Examiner agrees, however, it is noted that the cited claims were not rejected as anticipated, but as obvious in light of WERNER. WERNER fails to disclose the claimed second housing being substantially enclosed by the first housing, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the AC-to-DC converter second and third housings into a single housing to reduce costs and simplify the assembly of the patented illumination device of WERNER.

In response to Appellant's arguments that the transformer 80 and rectifier unit 81 of WERNER do not constitute separate housings, but are mere components of the AC-to-DC converter, the Appellant is advised that WERNER discloses a flashlight including a container 11 and caps 14 and 75, such elements (11, 14 and 75) being assembled together into a first housing (see Figure 1). An AC-to-DC converter is disclosed as formed by the individually provided transformer 80 and inverter unit 81. While the Appellant might be correct in that WERNER fails to explicitly state in the disclosure that the transformer 80 and inverter unit 81 are provided within a second "housing", the Appellant is advised that in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the

art would reasonably be expected to draw therefrom. *In re Preda*, 159 USPQ 342 (CCPA 1968). In this case, one of skilled in the art would have recognized the transformer 80 and inverter unit 81, as shown in Figure 1, to be disclosed, not merely as individual and discrete circuit elements, but as units packaged within individual housings. It is clear from Figure 1 that transformer 80 and inverter unit 81 are disclosed having not only a second housing but also a third housing.

In response to Appellant's arguments that there is no motivation to combined such separate housings into a single unit, as no evidenced can be found in the reference itself that such modification would reduce costs and simplify assembly, the Appellant is advised that it has been held by the courts that forming in one piece a structure which has formerly been formed in two, or more pieces, involves only routine skill in the art. *In re Larson*, 144 USPQ 347, 349 (CCPA 1965). In this case, one of ordinary skill in the art would have recognized that forming the AC-to-DC converter second and third housings into a single housing would have reduce costs (e.g. by requiring only two end portions for both the transformer 80 and the inverter unit 81, instead of two for each of the two individual elements) and simplify the assembly (e.g., as incorporating the proposed single transformer/inverter unit to the flashlight of WERNER would require a smaller number of steps, that two separate components that would require

not only integration to the flashlight of WERNER, but also a connection to one another) of the patented illumination device of WERNER.

C. Regarding the Examiner's rejection of **Claim 25** under 35 U.S.C. 35 U.S.C. 102(b) as anticipated by WERNER (U.S. Pat. 2,628,339), the Appellant argues (in page 11, lines 14-16) that the cited reference fails to disclose all the features of the claimed invention, specifically the second housing containing the converter circuitry, such second housing being substantially enclosed by the first housing. The Appellant further argues (in page 11, lines 30-32) that the entirety of the AC-to-DC converter circuitry is required by the language of Claim 25 to be contained within a second housing, as such is the structure disclosed by the instant patent application.

In response to Appellant's arguments that WERNER (U.S. Pat. 2,628,339) failed to disclose the second housing containing the converter circuitry, such second housing being substantially enclosed by the first housing, the Appellant is respectfully advised that while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the

claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 70 USPQ2d 1827 (Fed. Cir. May 13, 2004).

In this case, it is noted that the language of Claim 25 merely recites: "*an AC-to-DC adapter including a second housing containing converter circuitry, the AC-to-DC adapter being arranged within the cavity such that the second housing is substantially enclosed by the first housing*". The language of Claim 25 defines second housing as being part of the AC-to-DC adapter, with the converter circuitry being contained within such second housing. The whole of the AC-to-DC adapter is not required to be contained within the second housing by the language of Claim 25.

WERNER, as previously stated, clearly discloses a flashlight including a first housing (combination of elements 11, 14 and 75), such first housing enclosing an AC-to-DC adapter formed by transformer 80 and converter circuitry 81, such transformer and rectifier circuitry being contained in separate enclosures (as seen in Figure 1). The converter circuit housing (i.e. the second housing) is substantially enclosed by the first housing. While it is true that part of the AC-to-DC adapter (i.e. the transformer 80) is not contained by the second housing, Claim 25 does not require it to be (as opposed to Claim 14 which defines the complete AC-to-DC converter as contained within the second housing).

Regarding Appellant's attempts to define the structure of the invention using the instant disclosure, the Appellant is reminded that it is the language of the claims what defines the patentable subject matter, not the detailed description of the invention or the drawings. Reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is quite different from reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the language of the claim. *In re Prater*, 162 USPQ 541 (CCPA 1969). In this case, as previously stated, the whole of the AC-to-DC adapter is not required to be contained within the second housing by the language of Claim 25.

D. Regarding the Examiner's rejection of **Claim 17** under 35 U.S.C. 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339), the Appellant argues (in page 16, lines 24-28) that the cited reference fails to disclose all the features of the claimed invention, specifically the AC-to-DC converter circuit and prongs including a wall cube.

In response to Appellant's arguments that WERNER (U.S. Pat. 2,628,339) failed to disclose the AC-to-DC converter circuit and prongs including a wall cube, the Appellant is respectfully directed to Figure 1 (reference numbers 78 and 79) and Figure 2 (reference number 79a-b and unnumbered power cord) where a wall cube structure is clearly shown. In addition, WERNER states (from column 4, line 74, to column 5, line 4) that the patented flashlight is designed to be charged by connection to an 115v outlet.

E. Regarding the Examiner's rejection of **claims 18, 19, 28 and 29** under 35 U.S.C. 35 U.S.C. 103(a) as being unpatentable over WERNER (U.S. Pat. 2,628,339), the Appellant argues (in page 17, lines 16-19) that there is no motivation for the second housing of WERNER meeting UL standard 1310 (as recited in claims 18 and 28) or 94 VI (as recited in claims 19 and 29). The Appellant further argues (in page 17, lines 25-29) the second housing of WERNER cannot be rated independently from the rest of the flashlight, as such second housing is not removable.

In response to Appellant's arguments that there is no motivation to have the second housing of WERNER meet UL standard 1310 (as recited in claims 18 and 28) or 94 VI (as recited in claims 19 and 29), it would

have been obvious to one of ordinary skill in the art at the time the claimed invention was made to have the second housing satisfy the requirements of UL Standard 1310 (as recited in claims 18 and 28), or UL Standard 94 V1 (as recited in claims 19 and 29), since satisfying the operational and/or regulatory requirements of a particular application would have flown naturally to one of ordinary skill in the art.

N. Regarding Appellant's arguments that the second housing of WERNER cannot be rated independently from the rest of the flashlight, as such second housing is not removable, the Appellant is once again advised that claims are interpreted in light of the specification, but that limitations from the specification are not read into the claims. In this case, it is noted that claims 18, 19, 28 and 29 merely define the second housing as meeting the claimed standards, not that such second housing is rated independently from the rest of the flashlight, and as such, whether the second housing is removable or not is irrelevant. However, even if removability of the second housing was considered a requirement, the claims would still be unpatentable as the AC-to-DC circuit is indeed removable from the rest of the flashlight, as clearly stated by WERNER in column 4 (lines 37-48).

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F. Regarding the Examiner's rejection of **claims 16 and 20-22**, the Appellant present no arguments, except stating that such claims depend directly or indirectly from independent Claim 14, and would be allowable when/if the independent claim is allowed.

G. Regarding the Examiner's rejection of **claims 26 and 30-36**, the Appellant present no arguments, except stating that such claims depend directly or indirectly from independent Claim 25, and would be allowable when/if the independent claim is allowed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ismael Negron/

/Sandra L. O'Shea/

Supervisory Patent Examiner, Art Unit 2875

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